



[Billing Code: 6750-01-S]

## **FEDERAL TRADE COMMISSION**

### **16 CFR Part 429**

#### **Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed rule amendment; request for public comment.

**SUMMARY:** The Federal Trade Commission (“FTC” or “Commission”) has completed its regulatory review of the Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations (“Cooling-Off Rule” or “Rule”) as part of the Commission’s systematic review of all current Commission regulations and industry guides. The Rule makes it an unfair and deceptive act or practice for a seller engaged in a door-to-door sale of consumer goods or services, with a purchase price of \$25 or more, to fail to provide the buyer with certain oral and written disclosures regarding the buyer’s right to cancel the contract within three business days from the date of the sales transaction. Based on the comments received, the Commission has determined to retain the Rule. In addition, the Commission is soliciting public comment on a proposed increase in the \$25 exclusionary limit identified in the Rule to account for inflation since the exclusionary limit was established.

**DATES:** Written comments concerning the Cooling-Off Rule must be received no later than March 4, 2013.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Cooling-Off Rule Regulatory Review, 16 CFR 429, Comment, Project No. P087109” on your comment, and file your comment online at

<https://ftcpublic.commentworks.com/ftc/coolingoffproposedamend>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex C), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Sana Coleman Chriss, Attorney, (404) 656-1364, or Cindy A. Liebes, Regional Director, (404) 656-1390, Federal Trade Commission, Southeast Region, 225 Peachtree Street, N.E., Suite 1500, Atlanta, Georgia 30303.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The Commission systematically reviews all its rules and guides to ensure they continue to achieve their intended purpose without unduly burdening commerce. These reviews seek information about the costs and benefits of the rules and guides, and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission.

To that end, the Commission sought comment on the effectiveness of the Cooling-Off Rule, 16 CFR Part 429, including the continuing need for the Rule, its economic impact, and the effect of any technological, economic, or industry changes on the Rule.<sup>1</sup> The comment period closed on September 25, 2009.<sup>2</sup> The Commission has completed its analysis of the comments and finds that the Cooling-Off Rule continues to serve a valuable purpose in protecting

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<sup>1</sup> *Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations*, Request for Public Comment, 74 FR 18170 (April 21, 2009).

<sup>2</sup> *Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations*, Reopening of Comment Period, 74 FR 36972 (July 27, 2009).

consumers from unfair and deceptive transactions that fall within the scope of the Rule. Accordingly, consistent with the record established in this proceeding, the Commission has determined to retain the Rule and conclude its regulatory review. Simultaneously, the Commission has decided to seek public comment on a proposed increase in the exempted dollar amount identified in section 429.0(a) of the Rule from \$25 to \$130. This increase would account for inflation in the years since the Rule was promulgated and could balance compliance costs and consumer benefits in a manner that is consistent with the exclusionary limit established at the Rule's promulgation in 1972.

## **II. Background of the Regulatory Review**

The Cooling-Off Rule was promulgated by the Commission on October 26, 1972, and it was last amended on October 20, 1995.<sup>3</sup> The Rule, as amended, declares it an unfair and deceptive act or practice for a seller engaged in a door-to-door sale<sup>4</sup> of consumer goods or services, with a purchase price of \$25 or more, to fail to provide the buyer with certain oral and written disclosures regarding the buyer's right to cancel the contract within three business days from the date of the sales transaction.<sup>5</sup>

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<sup>3</sup> *Cooling-Off Period for Door-to-Door Sales*, Trade Regulations Rule and Statement of Basis and Purpose ("Cooling-Off Rule SBP"), 37 FR 22933 (Oct. 26, 1972); *Rules Concerning Cooling-Off Period for Sales Made at Homes or Certain Other Locations*, Final Non-Substantive Amendments to the Rule, 60 FR 54180 (Oct. 20, 1995).

<sup>4</sup> Door-to-door sales includes sales, leases, or rentals of consumer goods or services made at a place other than the place of business of the seller (*e.g.*, sales at the buyer's residence or at facilities rented on a temporary or short-term basis, such as hotel or motel rooms, convention centers, fairgrounds and restaurants, or sales at the buyer's workplace or in dormitory lounges). 16 CFR 429.0(a). A seller's place of business is a main or permanent branch office or local address of the seller. 16 CFR 429.0(d).

<sup>5</sup> See 16 CFR 429.1. Moreover, as a basis for promulgating the Rule, the Commission identified five categories of complaints directed to the industries utilizing door-to-door marketing

In particular, the Rule requires door-to-door sellers to furnish the buyer with a completed receipt, or a copy of the sales contract, containing a summary notice informing the buyer of the right to cancel the transaction, which must be in the same language as that principally used in the oral sales presentation. Door-to-door sellers also must provide the buyer with a completed cancellation form, in duplicate, captioned either “Notice of Right to Cancel” or “Notice of Cancellation,” one copy of which can be returned by the buyer to the seller to effect cancellation.

The Rule also requires such sellers, within 10 business days after receipt of a valid cancellation notice from a buyer, to honor the buyer’s cancellation by refunding all payments made under the contract, returning any traded-in property, cancelling and returning any security interests created in the transaction, and notifying the buyer whether the seller intends to repossess or abandon any shipped or delivered goods.

The Rule excludes certain kinds of transactions from the definition of door-to-door sale, including, for example, transactions conducted and consummated entirely by mail or telephone, and without any other contact between the buyer and seller or its representative prior to the delivery of goods or performance of services; transactions pertaining to the sale or rental of real property, to the sale of insurance, or to the sale of securities or commodities by a broker-dealer registered with the Securities and Exchange Commission; and transactions in which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act, or its regulations.<sup>6</sup> In addition, the Rule exempts: (1) sellers of automobiles, vans, trucks or other motor vehicles sold at auctions, tent sales or other temporary places of business, provided

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techniques: (1) deceptive tactics for getting in the door; (2) high pressure sales tactics; (3) misrepresentation of price, quality, and characteristics of the product; (4) high prices for low quality merchandise; and (5) the nuisance created by the uninvited salesperson. *Cooling-Off Rule SBP*, 37 FR at 22940.

<sup>6</sup> 16 CFR 429.0(a) (1)-(6).

that the seller is a seller of vehicles with a permanent place of business;<sup>7</sup> and (2) sellers of arts and crafts sold at fairs or similar places.<sup>8</sup>

Finally, the Rule preempts only those state laws or municipal ordinances that are directly inconsistent with the Rule, including, for example, state laws or ordinances that impose a fee or penalty on the buyer for exercising his or her right under the Rule, or that do not require the buyer to receive a notice of his or her right to cancel the transaction in substantially the same form as provided in the Commission's Rule.<sup>9</sup>

### **III. Regulatory Review Comments and Analysis**

The Commission received a total of five comments from: four consumer groups that filed jointly — the National Consumer Law Center, Consumers for Auto Reliability and Safety, Consumer Federation of America, and Consumers Union (collectively, the “Jointly Filing Consumer Groups”); the Direct Selling Association (“DSA”); the National Automobile Dealers Association (“NADA”); a small business, Fabian Seafood Company; and an individual, Helen Yohanek.<sup>10</sup> The comments are discussed below.

#### **A. Comments Supporting Retention of the Rule**

The Jointly Filing Consumer Groups, DSA, the small business, and the individual commenter all addressed the issue of whether there is a continuing need for the Rule. These commenters uniformly concluded that a continuing need for the Rule does exist. Specifically,

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<sup>7</sup> 16 CFR 429.3(a).

<sup>8</sup> 16 CFR 429.3(b).

<sup>9</sup> 16 CFR 429.2.

<sup>10</sup> The comments responsive to this regulatory review have been placed on the Commission's public record and may be found online at the following links on the Commission's website: <http://www.ftc.gov/os/comments/coolingoffrule/index.shtm> and <http://www.ftc.gov/os/comments/coolingoffrulereopen/index.shtm>.

DSA stated that it believes that “the Rule continues to serve the needs of consumers and sellers by enhancing the confidence of consumers in direct selling and serves as an ongoing deterrent to any firm or salesperson tempted to use high-pressure sales tactics.”<sup>11</sup> The individual commenter stated that she believes the Rule is “vital to protect some consumers.”<sup>12</sup> The small business owner acknowledged that while he does not believe the Rule should apply to his business, he understands that there should be rules for door-to-door sales.<sup>13</sup> Finally, the Jointly Filing Consumer Groups stated that they see a “strong continued need for the Rule due to ongoing consumer vulnerability to the types of abuses which the Rule initially sought to prevent.”<sup>14</sup> No commenters stated that the Rule should be rescinded. Accordingly, based on its experience and its analysis of the comments, the Commission finds that the Rule continues to benefit both consumers and sellers, and that there is a continuing need for the Rule.

#### **B. Comments Requesting Clarification of Portions of the Rule**

In their comments, the Jointly Filing Consumer Groups requested that the Commission clarify several aspects of the Rule, including whether the Rule covers rent-to-own transactions; covers services related to real property; requires payment for services rendered during the cooling-off period if the right to cancel is properly exercised; and gives consumers a continuing right to cancel if proper notice is not given. Each of these requests for clarification is discussed in turn below.

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<sup>11</sup> DSA at 2.

<sup>12</sup> Yohanek at 1.

<sup>13</sup> Fabian Seafood at 1 (“I understand that there should be rules for door-to-door sales, but there should be an exemption for our type of business, which does not go door-to-door and deals in perishable food.”).

<sup>14</sup> Jointly Filing Consumer Groups at 2.

**(1) Rent-to-Own Transactions**

The Jointly Filing Consumer Groups requested that the Commission clarify that the Cooling-Off Rule applies to rent-to-own transactions consummated away from the seller's place of business.<sup>15</sup> These commenters argued that rent-to-own transactions in which the consumer makes weekly payments to rent a product with the stated goal of ownership, often lead to the consumer paying an exorbitant amount that is typically more than the product is actually worth.<sup>16</sup> The commenters added that rent-to-own businesses target low-income consumers.<sup>17</sup> These commenters argued, therefore, that the Rule should be clarified to make its coverage of rent-to-own transactions evident to consumers by adding "rent-to-own" to the list of transactions set forth in section 429.0, subsections (a) and (b) of the Rule.<sup>18</sup>

In response to this request, the Commission clarifies that nothing in the Rule prevents its application to rent-to-own transactions away from a seller's place of business when such transactions meet the Rule's other requirements. Accordingly, the Commission believes that it is not necessary to change the Rule to reflect the Rule's application to rent-to-own transactions.<sup>19</sup>

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<sup>15</sup> *Id.* at 5.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> The Rule broadly defines a door-to-door sale and describes various exclusions and exemptions from the definition. As noted above, the definition includes certain sales, leases, or rentals of consumer goods or services. *See supra* note 4. The Rule does not exhaustively list the types of transactions to which the Rule applies. Attempting to itemize the types of transactions that meet the definitional requirements of the Rule could result in the Rule being erroneously interpreted to apply only to those types of transactions listed in the Rule. Accordingly, the Commission declines to propose adding rent-to-own transactions to section 429.0, subsections (a) and (b) of the Rule.

## **(2) Services Related to Real Property**

The Jointly Filing Consumer Groups also requested that the Commission clarify that the Cooling-Off Rule applies to services related to real property, such as mortgage modification, mortgage loan brokerage, and foreclosure rescue services.<sup>20</sup> The commenters argued that these services fall under the Rule's definition of "consumer services" because they are primarily for personal, family, or household purposes in accordance with section 429.0(b) of the Rule.<sup>21</sup> The commenters also noted that in some instances sellers of these services identify consumers through foreclosure notices and then approach the consumers in their homes.<sup>22</sup>

The Commission's Cooling-Off Rule expressly excludes transactions pertaining to the sale or rental of real property, the sale of insurance, or the sale of securities or commodities by a broker-dealer registered with the Securities and Exchange Commission.<sup>23</sup> As determined by the Commission when it promulgated the Rule, this exclusion, which renders the Rule inapplicable to the sale of real estate, does not necessarily reach so far as to exempt service-related transactions in which a consumer engages a real estate broker to sell his or her home or to rent and manage his or her residence during a temporary period of absence.<sup>24</sup> Similarly, the exclusion does not necessarily reach so far as to exempt the types of mortgage assistance relief services described by the Jointly Filing Commenters.

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<sup>20</sup> Jointly Filing Consumer Groups at 5.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 6.

<sup>23</sup> 16 CFR 429.0(a)(6).

<sup>24</sup> *Cooling-Off Rule SBP*, 37 FR at 22948.

Further, in the Mortgage Assistance Relief Services (“MARS”) rulemaking, the Commission declined to include a right-to-cancel provision in the final rule for all contracts for such services.<sup>25</sup> The basis for this decision was the Commission’s belief that, although MARS providers’ conduct may undermine consumers’ ability to make well-informed decisions, a right-to-cancel provision is not necessary because the final MARS Rule requires that MARS providers neither seek nor accept a fee until the consumer accepts an offer of relief. In the MARS proceeding, however, the Commission did not receive information concerning, and did not specifically address, a right to cancel MARS sales transactions accomplished in a door-to-door sales setting.

The Commission concludes in the instant proceeding that, notwithstanding its general determination not to impose a right to cancel in all MARS transactions, the Cooling-Off Rule’s right to cancel should extend to door-to-door sales of MARS. It does not follow from the Commission’s determination not to include a right-to-cancel provision in the MARS Rule that other statutes and regulations, such as the Cooling-Off Rule, cannot impose a remedy on transactions otherwise covered by those statutes and regulations. Both MARS sales and door-to-door sales, considered separately, raise concerns. As the Commission noted in the MARS Rule Statement of Basis and Purpose, “MARS providers direct their claims to financially distressed consumers who often are desperate for any solution to their mortgage problems and thus are vulnerable to the providers’ purported solutions. The Commission has long held that the risk of injury is exacerbated in situations in which sellers exercise undue influence over susceptible

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<sup>25</sup> *Mortgage Assistance Relief*, Final Rule and Statement of Basis and Purpose (“*MARS SBP*”), 75 FR 75092, 75123 (Dec. 1, 2010). The MARS Rule is codified at 12 CFR part 1015.

classes of purchasers.”<sup>26</sup> MARS sales undertaken door-to-door compound the concerns that either type of transaction, by itself, raises. Therefore, the Commission is hereby clarifying that to safeguard consumers’ ability to make informed purchasing decisions in these circumstances, the Cooling-Off Rule applies to the providers who sell mortgage assistance relief services door-to-door.<sup>27</sup>

**(3) Payment for Services Rendered During the Cooling-Off Period if the Right to Cancel is Properly Exercised**

In their comment, the Jointly Filing Consumer Groups observed that it is not possible to return services that the seller may have chosen to provide prior to the expiration of the three-day period and they correctly pointed out that the Rule imposes no such requirement.<sup>28</sup> The commenters requested that the Commission make clear that a consumer who validly exercises his or her right of cancellation pursuant to the Rule does not owe the seller for any service the seller elected to perform during the cooling-off period.<sup>29</sup>

The Commission has reviewed this comment and takes this opportunity to reiterate the determination made in its Statement of Basis and Purpose when it adopted the Rule in 1972: “in

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<sup>26</sup> *MARS SBP*, 75 FR at 75117. Similarly, the Commission has stated that “[h]igh-pressure sales tactics are the leading cause for consumer complaints about door-to-door selling . . . . The door-to-door sale, however, seems to be particularly susceptible to the use of these tactics.” *Cooling-Off Rule SBP*, 37 FR at 22937.

<sup>27</sup> The record in the MARS rulemaking, including the Commission’s enforcement experience, suggests that few MARS providers sell mortgage assistance relief services door-to-door. Instead, the record indicates that MARS providers typically employ other means to initiate contact with consumers. See *MARS SBP*, 75 FR at 75096 (“MARS providers commonly initiate contact with prospective consumers through Internet, radio, television, or direct mail advertising.”) (footnote omitted).

<sup>28</sup> Jointly Filing Consumer Groups at 6.

<sup>29</sup> *Id.*

non-emergency situations the seller should properly bear the risk of cancellation if he elects to perform before expiration of the cooling-off period.”<sup>30</sup> Thus, the Commission clarifies that, except in cases covered by the Rule’s exception for emergency repairs, a buyer who validly invokes the three-day right of rescission under the Rule is not obligated to reimburse the seller for services performed during the cooling-off period.<sup>31</sup>

**(4) Continuing Right to Cancel Under the Rule if Proper Notice is Not Given**

The Jointly Filing Consumer Groups argued that in a situation where the seller has failed to provide the required notice, the consumer should have a continuing right to cancel. That is, the consumer should be allowed to cancel until three days have elapsed since the consumer received notice of the right to cancel, whenever that occurs.<sup>32</sup> The commenters stated that courts have consistently interpreted various state cooling-off rules as including this continuing right and that many state statutes explicitly provide this right.<sup>33</sup> The commenters pointed out that if no continuing right were provided, the seller could deprive the consumer of her or his right to cancel simply by failing to provide the required notice.<sup>34</sup> The commenters requested that the

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<sup>30</sup> *Cooling-Off Rule SBP*, 37 FR at 22947.

<sup>31</sup> This clarification also applies in the context of a seller who installs goods before the expiration of the three-day cooling-off period. For example, in the context of the door-to-door sales of home security systems, the FTC recently issued a consumer education publication that advises consumers they have a right to cancel the purchase even if the equipment already has been installed. “FTC Facts for Consumers: Knock, Knock. Who’s There? Want to Buy a Home Security System?” (March 2011), available online at <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/real8.shtm>.

<sup>32</sup> Jointly Filing Consumer Groups at 6.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 7.

Commission clarify that consumers have a continuing right to cancel by inserting a statement into the Rule at 16 CFR 429.1.<sup>35</sup>

A seller theoretically could deny a consumer the right to cancel under the Rule by failing to provide the required notice. As a practical matter, however, the record does not indicate that this practice currently occurs with any prevalence.<sup>36</sup> Consequently, the Commission determines that a failure of sellers to provide the required cancellation notice is likely not sufficiently prevalent to justify proposing additional Rule provisions at this time. As a result, the Commission presently declines to propose modification of the Rule's treatment of this issue.<sup>37</sup> A seller who does not provide a buyer with compliant notice of his or her right to cancel is in violation of the Rule. The Commission, therefore, will continue its program of monitoring, investigating, and, where appropriate, taking enforcement against, persons who fail to comply with the Rule's notice requirements.

With respect to those state statutes that explicitly provide a continuing right to cancel, those state provisions would not be preempted to the extent those provisions provide consumers with broader protection than, and are not otherwise directly inconsistent with, the Commission's Rule.<sup>38</sup>

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<sup>35</sup> *Id.*

<sup>36</sup> A review of complaints in the Consumer Sentinel database reveals only a *de minimis* percentage of total complaints that address a seller's noncompliance with the Rule's notice requirements.

<sup>37</sup> See 15 U.S.C. 57a(b)(3) (requiring the Commission to have reason to believe that the practices to be addressed by a rulemaking are "prevalent" before commencing a rulemaking proceeding); see also 16 CFR 1.14(a)(1).

<sup>38</sup> See 16 CFR 429.2(b).

## **C. Comments Requesting Expansion of the Rule**

### **(1) Motor Vehicle Sales at Temporary Locations**

The Jointly Filing Consumer Groups requested that the Commission remove the exemption for motor vehicle sales at temporary locations because, they asserted, consumers at temporary sales events are particularly susceptible to high-pressure sales tactics and misrepresentations.<sup>39</sup> The commenters requested that the exemption be removed or, alternatively, if it is retained, that it be modified to require the seller to inform the consumer in writing of the name of and contact information for its permanent place of business and to permit the seller only to hold temporary sales within 30 miles of its permanent place of business.<sup>40</sup>

In creating the exemption for sellers of automobiles at auctions, tent sales, or other temporary places of business, the Commission concluded that:

To the extent that certain problems occur at auto sales, they typify the same problems that may occur at transactions at the seller's place of business and are addressed by other Commission rules, e.g., the Used Car Rule and Guides on Bait and Switch, or state laws, e.g., prohibitions of "As is Sales."<sup>41</sup>

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<sup>39</sup> Jointly Filing Consumer Groups at 8 (stating that consumers may be lured to the sale by deception on the part of the seller, citing how an out-of-state car dealer holding a tent sale misled consumers into thinking it was a local dealer, and discussing high-pressured sales tactics such as "flipping" a consumer from one salesperson to another until the customer signs an agreement, often without clearly understanding its terms). NADA, however, stated in its comment that it is not aware of any circumstances that would warrant expanding the Cooling-Off Rule to cover motor vehicle sales at the place of business of a motor vehicle dealer or at temporary business locations. NADA at 1.

<sup>40</sup> Jointly Filing Consumer Groups at 9.

<sup>41</sup> See *Rule on Cooling-Off Period for Door-to-Door Sales*, Final Non-Substantive Amendments and Exemptions to Sellers of Automobiles at Auctions and Arts and Crafts at Fairs ("Exemptions for Sellers of Automobiles at Auctions and Arts and Crafts at Fairs"), 53 FR 45455, 45458 (Nov. 10, 1988).

Thus, while the Commission recognizes the concerns expressed by the Jointly Filing Consumer Groups, the Commission continues to believe that other laws more appropriately address potential problems occurring at those venues. Accordingly, the Commission does not find sufficient justification to propose the requested modification to the Rule at this time. The Commission reiterates, however, that the exemption for automobile sales will continue to be limited to sellers who have at least one permanent place of business.<sup>42</sup> The Rule will continue to cover any itinerant automobile sellers without at least one permanent place of business.

## **(2) Used Car Sales at Any Location**

The Jointly Filing Consumer Groups request that the Commission expand the Rule to cover used car sales at any location.<sup>43</sup> They argued that used car dealers create conditions, such as forcing consumers to stay in the dealership for long periods of time by keeping the potential trade-in or the consumer's driver's license, or using other ruses, which are equivalent to a salesperson keeping a buyer captive in his or her home, if not worse.<sup>44</sup> The commenters stated that, in contrast to new car sales, used car sales have a higher risk of misrepresentations and sales at a much higher price than the used car is worth.<sup>45</sup> The commenters also noted that low-income

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<sup>42</sup> *Id.* Moreover, at this time, there is insufficient evidence in the record to support proposing a modification that would impose a geographical limitation of 30 miles for sellers of used cars at temporary locations.

<sup>43</sup> Jointly Filing Consumer Groups at 9.

<sup>44</sup> *Id.* at 11.

<sup>45</sup> *Id.* The commenters cite to a practice in which a dealer steers borrowers toward more expensive loans in exchange for a kickback from the automobile financing lender. The commenters also describe a practice called “yo-yo” sales, in which a dealer offers an attractive interest rate to a consumer, allows the consumer to drive the car home, and later contacts the consumer to say that the financing could not be arranged at the original terms in order to impose on the consumer a higher interest rate or less favorable terms. *Id.* at 12.

consumers are especially vulnerable to dealer abuses in the used car market.<sup>46</sup> In addition, the commenters cited certain safety risks with used cars sold “as is,” and cite to the selling of used flood-damaged cars without disclosure of the car’s condition.<sup>47</sup> The commenters believe that the right of cancellation under the Cooling-Off Rule is necessary to combat these issues, particularly given the magnitude and importance of a car purchase for most consumers.<sup>48</sup>

The Commission has never intended for the Rule to be construed so broadly as to apply to used car sales at a dealer’s premises. In its *Federal Register* notice announcing that sales of automobiles at temporary places of business are exempt from the Rule, the Commission stated that:

Although the Rule is primarily directed toward door-to-door sales, the Commission was also concerned with itinerant salesmen who sell at restaurants, shops and other places, and with the possibility that salespeople would attempt to evade the Rule’s application by luring consumers outside the home by subterfuge. The Commission therefore broadened the definition of a “door-to-door” sale to include those sales made away from the seller’s place of business.<sup>49</sup>

The Rule is tailored to remedy practices associated with sales that occur in settings other than the seller’s place of business. Modification of the Rule to cover at-premises sales would go beyond the scope of what the Rule is intended to cover.

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<sup>46</sup> *Id.* at 11.

<sup>47</sup> *Id.* at 12.

<sup>48</sup> *Id.* The commenters also discuss their interpretation of a European Union directive that gives “consumers 14 days to withdraw from essentially any transaction based on credit for any reason. Council Directive 2008/48/EC, art. 14, 2008 O.J. (L 133/66 (EC)). It appears as if cars purchased on credit — which most are — are included.” *Id.* at 10.

<sup>49</sup> Exemptions for Sellers of Automobiles at Auctions and Arts and Crafts at Fairs, 53 FR at 45458.

Additionally, in many instances, disclosures required by other Commission rules, such as the Used Car Rule, adequately address the concerns identified by the commenters. For example, the Buyers Guide provision under the Used Car Rule requires dealers to disclose to consumers: whether the vehicle is being sold “as is” or with a warranty; what percentage of the repair costs a dealer will pay under warranty; information about the car’s major mechanical and electrical systems, as well as any major potential problems; and that consumers can ask to have the car inspected by an independent mechanic before buying.<sup>50</sup>

With respect to other potential issues involving car dealers, in 2011, the Commission conducted a series of public roundtables to gather information on consumers’ experiences in the sales, financing, and leasing of motor vehicles at dealerships. The information will help the Commission determine what, if any, future actions would be appropriate, such as specific enforcement initiatives, increased consumer and business education, promulgating rules, or other action.<sup>51</sup>

### **(3) Online Payday Lending**

The Jointly Filing Consumer Groups requested that the Commission expand the Rule to include transactions with online payday lenders.<sup>52</sup> These commenters argued that online payday

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<sup>50</sup> 16 CFR 455.2(a)-(b).

<sup>51</sup> See *Public Roundtables: Protecting Consumers in the Sale and Leasing of Motor Vehicles*, Notice Announcing Public Roundtables Regarding Public Participation, and Providing Opportunity for Comment, 76 FR 14014 (Mar. 15, 2011), available at <http://www.gpo.gov/fdsys/pkg/FR-2011-03-15/pdf/2011-5873.pdf>; see also <http://www.ftc.gov/bcp/workshops/motorvehicles>. Public comments filed regarding these motor vehicle sales, financing and leasing issues are available at <http://www.ftc.gov/os/comments/motorvehicleroundtable/index.shtm>.

<sup>52</sup> Jointly Filing Consumer Groups at 13.

lenders use aggressive techniques that are similar to the practices of door-to-door salespersons.<sup>53</sup> They stated that consumers accessing payday loans are generally low-income consumers without access to more regulated, legitimate lines of credit or loans.<sup>54</sup> These consumers are vulnerable to the misrepresentations made by payday lenders, who frequently do not make the actual cost of loans clear.<sup>55</sup> Consumers who get payday loans online, they argued, are particularly vulnerable because these online providers do not disclose their physical place of business, if any, or make clear any state where they purport to be licensed.<sup>56</sup> The commenters also stated that the industry aggressively seeks to make personal contact with consumers by sending email messages to them promising immediate loans, without always making clear that the email messages are advertisements.<sup>57</sup>

In the Commission's experience, consumers in typical online payday loan transactions receive cash in exchange for their personal checks or authorization to debit their bank accounts, and lenders and consumers agree that consumers' checks will not be cashed or their accounts debited until a designated future date. Online payday loans have high fees and short repayment periods, which translate to high annual rates, and they often are due on the borrower's next payday, usually within about two weeks. The Commission determines that the Cooling-Off Rule is not designed to address online payday loan transactions, but notes that other protections for consumers are available. For example, the federal Truth in Lending Act ("TILA") treats payday loans like other types of credit. Under TILA, and its implementing Regulation Z, those who

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

advertise the specific cost of credit must disclose the annual percentage rate (“APR”) of the loans to help consumers make better-informed decisions, including assisting them in comparison shopping among loans.

To the extent that payday lenders aggressively seek to make personal contact with consumers by sending email messages, additional protections could apply under the Controlling the Assault of Non-Solicited Pornography And Marketing Act (the “CAN-SPAM Act”). For example, the CAN-SPAM Act requires a sender of an unsolicited commercial email message to clearly and conspicuously disclose that the message is an advertisement and to provide consumers with a way to opt-out of receiving unwanted email messages from the sender in the future.<sup>58</sup>

In addition, the FTC has jurisdiction to bring enforcement actions under Section 5 of the FTC Act, 15 U.S.C. 45, for unfair and deceptive acts or practices in the payday lending industry. The Commission has brought several such actions, mostly stemming from either deceptive representations made by payday lenders or unfair practices regarding the collection of payday loans.<sup>59</sup>

#### **D. Comment Requesting Exemption for Truck Sales of Perishable Food**

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<sup>58</sup> 15 U.S.C. 7704(a)(3) and (a)(5).

<sup>59</sup> See, e.g., *FTC v. Loanpointe, LLC*, Case No. 2:10-CV-00225 (D. Utah 2010) (the Commission brought Section 5 and Fair Debt Collection Practices Act claims alleging that the lender falsely claimed an entitlement to garnish wages, falsely claimed they informed debtors that their wages would be garnished, and disclosed information about debts to third parties); *FTC v. Virtual Works, LLC*, Case No. C09-03815 (N.D. Cal. 2009) (the Commission alleged that the defendants violated Section 5 by deceiving payday borrowers into purchasing offered debit cards for a fee); *FTC and State of Nevada v. Cash Today, Ltd.*, Case No. 3:08-CV-00590-BES-VPC (D. Nev. 2008) (the Commission alleged that the defendants violated Section 5 by falsely claiming that consumers were legally obligated to pay debts when they were not, falsely threatening consumers with arrest or imprisonment, repeatedly calling consumers at work, using abusive and profane language, and disclosing debts to third parties).

One commenter requested that the Commission exempt from the Rule sales of perishable food from trucks parked at “fixed locations.”<sup>60</sup> The commenter stated that his business periodically sells fresh seafood in such a manner in various cities and towns throughout the country. He noted that the business does not accept credit cards, nor does it enter into any contracts with consumers for future delivery.<sup>61</sup>

The Rule generally covers businesses that sell consumer goods from trucks or other temporary locations (such as fairgrounds or convention centers).<sup>62</sup> Sales at temporary locations, like sales in consumers’ homes, can involve techniques that prompted the Commission to adopt the Rule in 1972 (discussed at note 5, *supra*). These types of sales, for example, may involve high-pressure sales tactics, misrepresentations about the price, quality, and characteristics of the products, and high prices for low quality merchandise. In the absence of other protections, consumers purchasing from sellers at temporary locations also can face challenges locating those sellers after their transactions to seek recourse if there are problems. Nothing in the record or the Commission’s experience indicates that these techniques are less of a concern now than they were in 1972. Consequently, the Commission declines to propose an exemption for truck-based sales.

**E. Comments Concerning Increase in \$25 Exclusionary Limit to \$130 to Reflect Inflation**

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<sup>60</sup> Fabian Seafood Company at 1.

<sup>61</sup> The commenter also expresses concern that “[a]ccording to the present rules, a customer can purchase \$100 in fresh seafood, cancel the sale within 3 days for no reason, get a refund from us, and then, since we will not return to the customer’s city for 3-4 weeks to retrieve the seafood, the customer may then just keep the seafood.” *Id.* The comment, however, does not cite examples of this actually happening, and the proposed change in the exclusionary limit identified in § 429.0 from \$25 to \$130 may moot this concern for many transactions.

<sup>62</sup> See 16 CFR 429.0(a).

In its comment, DSA requested that the Commission increase the Rule's \$25 exclusionary limit to one that reflects inflation since the Rule's enactment.<sup>63</sup> The Jointly Filing Consumer Groups, however, stated that because transactions of \$25 or more can result in financial over-extension for many consumers, the Rule's current exclusionary limit should be maintained without adjustment for inflation.<sup>64</sup>

Based on its review of these comments and the Commission's regulatory and enforcement experience as a whole, the Commission has determined to seek public comment on a proposed increase in the Rule's exempted amount<sup>65</sup> to \$130. The proposed increase in the Rule's exclusionary limit would exempt a seller only with regard to a sale, lease, or rental of consumer goods or services, with a purchase price below \$130 whether under single or multiple contracts.<sup>66</sup>

Under Section 18(g)(2) of the FTC Act, the Commission may on its own motion, or in response to a petition, provide for exemptions from the operation of trade regulation rules if the Commission finds that the application of the rule to persons or a class of persons is not necessary to prevent the unfair or deceptive act or practice to which the rule relates.<sup>67</sup> Section 18 provides

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<sup>63</sup> DSA at 5.

<sup>64</sup> Jointly Filing Consumer Groups at 4.

<sup>65</sup> 16 CFR 429.0

<sup>66</sup> The Rule would continue to cover a seller's transactions that are valued above the proposed revised exempted amount of \$130 or more. A seller would be exempt from the Rule only to the extent that a particular transaction, whether under single or multiple contracts, falls below the proposed revised minimum dollar amount of \$130.

<sup>67</sup> 15 U.S.C. 57a(g)(2).

that procedures under the Administrative Procedure Act, 5 U.S.C. 553, shall apply in proceedings to consider such an exemption.<sup>68</sup>

The Commission tentatively concludes that an increase in the exclusionary amount is warranted because application of the Rule to sellers of goods priced below \$130 appears unnecessary to prevent the unfair or deceptive practices addressed by the Rule. Currently, the Rule, in part, defines a door-to-door sale as a sale, lease, or rental of consumer goods or services with a purchase price of \$25 or more, whether under single or multiple contracts. The \$25 exempted dollar amount has remained unchanged for four decades since the Commission promulgated the Rule in 1972. Based on changes in the most general consumer price index, an item that cost \$25 in 1972 would cost approximately \$130 today.<sup>69</sup>

Given this data, the Commission is seeking comment on a proposed increase in the exclusionary limit from \$25 to \$130. By accounting for inflation, this increase of the exempted dollar amount could balance compliance costs and consumer benefits in today's marketplace in a manner that is consistent with the exclusionary limit originally established at the Rule's promulgation in the early 1970s.<sup>70</sup> The Commission specifically seeks comment on:

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<sup>68</sup> *Id.* The Commission has previously used this exemption authority to exempt sales of autos at public auctions by established companies and sales at arts and craft fairs from the operation of the Rule. 53 FR 45455; *see also* 16 CFR 429.3.

<sup>69</sup> The average value of the CPI-U for 2010 was 218.056, while the average value for 1972 was 41.8. *See* U.S. Department of Labor, Bureau of Labor Statistics, "Consumer Price Index, All Urban Consumers, U.S. City Average, All Items," *available at* <ftp://ftp.bls.gov/pub/special.requests/cpi/cpiiai.txt>, visited Oct. 1, 2012. Dividing 218.056 by 41.8 gives a value of 5.217 and multiplying this figure by \$25 gives a value of \$130.43. Rounding down to \$130 yields the proposed new minimum dollar amount.

<sup>70</sup> *See also Cooling-Off Rule SBP*, 37 FR at 22946 ("In deciding that the \$10 exclusion in the proposed rule should be increased to \$25, the Commission was persuaded by the fact that a door-to-door salesman could not long survive if his livelihood depended upon the expenditure of very much time and effort to make a sale of under \$25. Sales for less than that amount simply would not justify the use of a lengthy high-pressure sales pitch which has been identified as the most

1. whether the Rule's \$25 exclusionary limit should be increased to account for inflation since the Rule was first promulgated in 1972 and to exempt from the Rule's coverage sales, leases, or rentals of consumer goods or services with a purchase price of less than \$130, whether under single or multiple contracts;
2. what types of transactions would become exempt from the Rule as a consequence of the increase;
3. whether transactions intended to be covered by the Rule when originally adopted in 1972 would become exempt as a result of the increase;
4. how the increase would impact the benefits the Rule currently provides to consumers and commerce;
5. how the increase would impact the burdens or costs the Rule currently imposes on sellers subject to the Rule's requirements; and
6. whether the increase would impact the enforcement of state laws and municipal ordinances.

**F. Comments Proposing Modifications That Would Affect Contractual Provisions in Agreements Between Buyers and Sellers in Door-to-Door Transactions**

**(1) Arbitration Agreements**

The Jointly Filing Consumer Groups argued that the Rule should expressly prohibit arbitration agreements because they believe sellers may try to insulate themselves from liability for abusive practices associated with door-to-door sales through the use of arbitration clauses.<sup>71</sup>

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prevalent source of complaints regarding door-to-door sales. Virtually all of the examples of the sort of sales which outraged consumers were for amounts substantially in excess of \$25.”).

<sup>71</sup> Jointly Filing Consumer Groups at 14.

The commenters described the potential for abuse by sellers using arbitration agreements, but presented no evidence to show that there is any widespread abuse of arbitration agreements occurring within the door-to-door sales industry that might warrant a provision addressing the use of arbitration agreements.<sup>72</sup> Consequently, the Commission declines to propose modification of the Rule to address the use of arbitration provisions in agreements between door-to-door sellers and their customers.

**(2) An Independent Contractual Provision Stating That the Consumer Has the Right to Cancel Pursuant to the Terms of the Notice**

The Jointly Filing Consumer Groups requested that the Commission amend the Rule to require sellers to include a contractual provision which states that consumers have the right to cancel pursuant to the terms of the cancellation notice.<sup>73</sup> This provision, they argued, would enable consumers to access the “full range of options for redress available under contract law.”<sup>74</sup> The commenters, however, did not present any evidence to suggest that the absence of such a provision has in any way impinged upon consumers’ ability to exercise their rights against sellers under this Rule. The Rule provides consumers a three-day cooling off period for door-to-door sales and requires sellers to provide clear disclosures regarding a consumer’s right to cancel. Specifically, the Rule requires the following statement on the contract itself in immediate proximity to the signature lines (or on the front page of the receipt if no contract is used): “You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after

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<sup>72</sup> The Commission, however, is cognizant of concerns about arbitration provisions in general and in particular as they relate to debt collection agreements. *See, e.g.,* Federal Trade Commission, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration* (July 2010), available at <http://www.ftc.gov/os/2010/07/debtcollectionreport.pdf>.

<sup>73</sup> Jointly Filing Consumer Groups at 15.

<sup>74</sup> *Id.*

the date of this transaction. See the attached notice of cancellation form for an explanation of this right.”<sup>75</sup> The commenters did not explain how this provision falls short in protecting consumers’ rights under the Rule. It is a violation of the Rule to fail or refuse to honor any valid notice of cancellation by a buyer.<sup>76</sup> The Commission will continue to monitor, investigate, and, where appropriate, take enforcement action for violations of the Rule. Accordingly, due to the lack of evidentiary support indicating that the Rule’s current requirements are insufficient to protect consumers’ ability to exercise their rights under the Rule, the Commission declines to propose further modifications to the Rule to mandate that sellers include an additional contract provision stating that buyers have the right to cancel pursuant to the terms of the cancellation notice.

**G. Comments Proposing Modifications to Requirements for Effecting Cancellation**

**(1) Alternative Compliance for Companies That Offer 100% Money-back Guarantees**

DSA argued that many DSA member companies offer 100% money-back guarantees or longer periods of rescission than required by the Rule.<sup>77</sup> DSA recommended that companies be allowed to substitute the language giving notice of these protections for that of the Cooling-Off Rule.<sup>78</sup> DSA asserted that permitting such alternative compliance would reduce costs associated with printing and administering the cooling-off notice and reduce costs associated with training

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<sup>75</sup> 16 CFR 429.1.

<sup>76</sup> 16 CFR 429.1(g).

<sup>77</sup> DSA at 3.

<sup>78</sup> *Id.*

both home-office personnel and independent sellers.<sup>79</sup> In its Statement of Basis and Purpose that accompanied the Rule in 1972, the Commission stated:

Adoption of a provision which would exclude from applicability of the rule sellers who provide a money-back guarantee would increase the enforcement problems associated with the rule to a point that the rule would be almost ineffectual. Every direct seller who desired such an exclusion would claim he offered such guarantee. Then the Commission would be confronted with a neverending problem of determining whether the seller in fact gave such a guarantee and whether he performed his obligations under it. One of the principal advantages of the cooling-off rule is that it is self-enforcing. The consumer is given the unilateral right to cancel the sale. Its effectiveness does not depend upon whether a branch representative or subordinate manager understands the meaning and effect of a guarantee, or even upon his willingness to honor such a guarantee.<sup>80</sup>

The commenter advanced no compelling reason to revisit this issue. It is still the case that enforceability problems associated with 100% money-back guarantees would undermine the self-enforcing nature of the Cooling-Off Rule. The Commission, therefore, declines to propose modification of the Rule to allow an alternative compliance scheme for companies that offer 100% money-back guarantees or longer periods of rescission.

## **(2) Duplicate Notice Requirement**

DSA requested that the Commission eliminate the Rule's duplicate notice requirement.<sup>81</sup> DSA contended that there is virtually an automatic record of sales and cancellations in most transactions and that when paper cancellations are made, the almost universal access to copier machines makes the duplicate notice superfluous.<sup>82</sup> DSA argued further that reducing the duplicate notice requirement would reduce environmental waste.<sup>83</sup>

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<sup>79</sup> *Id.*

<sup>80</sup> *Cooling-Off Rule SBP*, 37 FR at 22948.

<sup>81</sup> DSA at 4.

<sup>82</sup> *Id.*

The Rule provides in part that sellers must furnish each buyer, at the time the buyer signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form, in duplicate, captioned either “NOTICE OF RIGHT TO CANCEL” or “NOTICE OF CANCELLATION.”<sup>84</sup> The requirement that this notice be provided in duplicate is to ensure that consumers desiring to cancel their transactions have both a copy of the notice to return to sellers to effect the cancellation and a copy to keep. In earlier proceedings, the Commission clarified that sellers could comply with this provision by, for example, using a contract or receipt with the reverse side containing one “Notice of Cancellation” and an attached “Notice” to be used by the buyer should the buyer decide to cancel.<sup>85</sup> The Commission also stated that another alternative method of complying with the duplicate notice requirement would be for the seller to give the buyer two copies of the contract or receipt with both having the notice on the reverse side of the contract or receipt.<sup>86</sup> The Commission continues to believe that:

by providing the seller with increased flexibility in complying with the duplicate notice provisions of the Rule, the policy objectives of those provisions will be attained at a lower cost (including paperwork-related costs) to the seller and ultimately to the consumer.<sup>87</sup>

The Commission believes that the flexible duplicate notice requirement avoids imposing additional expense on, and time required of, those consumers who would need to access copier machines in order to preserve a record of their right to cancel. The Commission further believes

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<sup>83</sup> *Id.*

<sup>84</sup> 16 CFR 429.1(b).

<sup>85</sup> Exemptions to Sellers of Automobiles at Auctions and Arts and Crafts at Fairs, 53 FR at 45457.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

that this burden on consumers would likely exceed the potential benefits of reducing environmental waste that DSA claims would be achieved by eliminating the duplicate receipt requirement. Consequently, the Commission declines to propose elimination of the duplicate notice requirement.

### **(3) Phone Cancellations**

One commenter argued that the Commission should permit phone cancellations under the Rule.<sup>88</sup> During the Commission's promulgation of the Rule in 1972, both industry and consumer representatives opposed permitting oral cancellations due to the potential difficulty that would arise as to whether the buyer had actually exercised his or her right of cancellation.<sup>89</sup> Consumer groups responded that salesmen who frequent impoverished neighborhoods would simply disregard oral cancellations and that the method would not be of any real assistance to those who were expected to benefit from it.<sup>90</sup> The Commission found at that time that the possibility of confusion and uncertainty were sufficiently great to warrant rejection of a Rule provision permitting oral cancellations.<sup>91</sup> The concerns expressed by the Commission at that time appear to remain unchanged and the current record does not reflect any evidence to the contrary. For these reasons, the Commission declines to propose permitting the use of phone cancellations.

### **H. Comments Proposing That the Commission Study the Language of the Cancellation Notice and Modify the Notice's Font Size**

DSA argued that the Commission should conduct a study to determine the efficacy of the language in the Rule's cancellation notice because, in their view, the notice uses too many words

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<sup>88</sup> Yohanek at 1.

<sup>89</sup> *Cooling-Off Rule SBP*, 37 FR at 22950.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

to convey the buyer's rights.<sup>92</sup> However, DSA offered no evidence tending to show that the language is burdensome on businesses or confusing to consumers, or that any other issue exists that would warrant an examination of the notice's efficacy.

Moreover, during its 1988 regulatory review concerning the Cooling-Off Rule, the Commission recognized that sellers should have the option of shortening the notice by eliminating sections that are inapplicable to a particular transaction. The Commission determined that much of the mandatory language in the notice may not apply to many direct sales because they do not involve, for example, traded-in property, negotiable instruments, or property being delivered prior to the expiration of the three day cooling-off period. As a result, the Commission then amended the Rule by giving sellers the option to shorten the notice by eliminating sections that are inapplicable to a particular transaction.<sup>93</sup> The Commission stated that its amendment would reduce paperwork and related costs incurred by sellers in complying with the Rule and benefit consumers by increasing the likelihood of consumers reading and understanding key provisions of all documents.<sup>94</sup>

In addition, the Jointly Filing Consumer Groups argued that the Rule's 10 point font size should be increased.<sup>95</sup> These commenters argued that in light of the range of font options available with today's word-processing technology, a font size of 10 may be too small.<sup>96</sup> They

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<sup>92</sup> DSA at 5.

<sup>93</sup> Exemptions for Sellers of Automobiles at Auctions and Arts and Crafts at Fairs, 53 FR at 45457.

<sup>94</sup> *Id.*

<sup>95</sup> Jointly Filing Consumer Groups at 15.

<sup>96</sup> *Id.*

cited a study which concluded that an 11 to 14 point font size should be used regardless of one's audience.<sup>97</sup> These commenters recommended increasing the minimum font size to at least 12 points.<sup>98</sup>

The Rule states that sellers should use bold face type in a minimum size of 10 points.<sup>99</sup> The Commission agrees that whenever possible, an appropriate larger font size should be used in sellers' cancellation notices. However, there is no evidence on the record indicating that buyers are having any widespread problems reading or understanding sellers' cancellation notices due to the minimum font size requirement. Accordingly, the Commission declines to propose modification of the Rule's minimum font size requirement at this time.

#### **I. Suggestion to Preempt All State Cooling-Off Regulations**

DSA argued that a complete preemption of all state and municipal cooling-off ordinances is warranted in the case of the Cooling-Off Rule because requiring different standards for different states is an unjustified burden on businesses and confusing to consumers with little to no benefit.<sup>100</sup> They argued that the Commission's Cooling-Off Rule is sufficient protection and should be uniformly used by all companies in all U.S. jurisdictions.<sup>101</sup>

The Commission believes there is no valid rationale for complete preemption of all state and municipal cooling-off rules. As stated in the Commission's 1972 Statement of Basis and

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<sup>97</sup> *Id.* According to the commenters, the study is a final class project submitted by a graduate student who is pursuing a Master's Degree in the subject of Information Science.

<sup>98</sup> *Id.*

<sup>99</sup> 16 CFR 429.1(a).

<sup>100</sup> DSA at 5.

<sup>101</sup> *Id.*

Purpose: “If the State cooling-off laws give the consumer greater benefit and protection in regard to notice, time for election of the cancellation remedy, or in transactions exempted from this rule, there seems to be no reason to deprive the affected consumers of these benefits.”<sup>102</sup> Moreover, the record continues to support the view that “the joint and coordinated efforts of both the Commission and State and local officials are required to insure that consumers who have purchased from a door-to-door seller something they do not want, do not need, or cannot afford, be accorded a unilateral right to rescind, without penalty, their agreements to purchase those goods or services.”<sup>103</sup> Additionally, state laws governing door-to-door transactions hold particular importance given the local nature of these types of transactions. Accordingly, the Commission declines to propose to adopt a provision preempting all state-cooling off regulations.

#### **IV. Instructions for Comment Submissions**

The Cooling-Off Rule currently excludes from the Rule’s coverage sales, leases, or rentals of consumer goods or services with a purchase price of \$25 or less, whether under single or multiple contracts.<sup>104</sup> Through the instant proceeding, the Commission requests comment on a proposed increase of this exclusionary limit to \$130 to account for inflation since the exempted dollar amount was established in 1972.<sup>105</sup>

The Commission invites interested persons to submit written comments on any issue of fact, law, or policy that may bear upon the proposals under consideration. Please include

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<sup>102</sup> *Cooling-Off Rule SBP*, 37 FR at 22958.

<sup>103</sup> 16 CFR 429.2(a).

<sup>104</sup> 16 CFR 429.0.

<sup>105</sup> *See supra* Section III. E.

explanations for any answers provided, as well as supporting evidence where appropriate. After examining the comments, the Commission will determine whether to issue specific amendments.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 4, 2013. Write “Cooling-Off Rule Regulatory Review, 16 CFR 429, Comment, Project No. P087109” on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtml>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn’t include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment doesn’t include any sensitive health information, like medical records or other individually identifiable health information. In addition, don’t include any “[t]rade secret or any commercial or financial information . . . which is privileged or confidential,” as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure

explained in FTC Rule 4.9(c), 16 CFR 4.9(c).<sup>106</sup> Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/coolingoffproposedamend>, by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!/home>, you also may file a comment through that website.

If you file your comment on paper, write “Cooling-Off Rule Regulatory Review, 16 CFR 429, Comment, Project No. P087109” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex C), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 4, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission’s privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

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<sup>106</sup> In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

## **V. Regulatory Analysis and Regulatory Flexibility Act**

Under Section 22 of the FTC Act, 15 U.S.C. 57b, the Commission must issue a regulatory analysis for a proceeding to amend a rule only when it: (1) estimates that the amendment will have an annual effect on the national economy of \$100,000,000 or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers.

The Commission believes the amendments will have no significant economic or other impact on the economy, prices, or regulated entities or consumers. The proposed Rule would merely increase the Rule's exclusionary limit to take into account inflation since the Rule's promulgation in 1972. Sellers of many goods previously covered by the Rule will experience a reduction in their compliance burden. As such, the economic impact of the final Rule will be minimal.

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601-612, requires an agency to provide an Initial Regulatory Flexibility Analysis ("IRFA") with a proposed rule and a Final Regulatory Flexibility Analysis ("FRFA") with the final rule, if any, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.<sup>107</sup> For the reasons stated above, the FTC does not expect that the final Rule will have a significant economic impact on a substantial number of small entities. The proposed Rule would exempt many small entities from the Rule's requirements when they engage in transactions valued below \$130. Accordingly, the Commission hereby certifies that this proposed Rule will not have a

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<sup>107</sup> 5 U.S.C. 603-605.

significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612.

The Rule applies to sellers of goods and services, including small entities, who make sales at a place other than the place of business of the seller (e.g., buyer's home, workplace or dormitory, or at facilities rented by the seller on a temporary or short-term basis, such as hotel or motel rooms, convention centers, fairgrounds and restaurants). Under the Small Business Size Standards issued by the Small Business Administration, retail sellers and service providers generally qualify as small businesses if their sales are less than \$7.0 million annually.<sup>108</sup>

The proposed Rule is intended to reduce burdens on these small entities by exempting transactions valued at less than \$130 from the Rule's coverage. The proposed amendment does not expand the coverage of the Rule in a way that would affect small businesses.

Pursuant to 5 U.S.C. 605(b), this proposed Rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. This document serves as notice to the Small Business Administration of the agency's certification of no significant impact.

## **VI. Paperwork Reduction Act**

The Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501 *et seq.*, requires government agencies, before promulgating rules or other regulations that require "collections of information" (i.e., recordkeeping, reporting, or third-party disclosure requirements), to obtain approval from the Office of Management and Budget ("OMB"). The amendment will not impose collection requirements, so OMB approval is unnecessary.

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<sup>108</sup> See <http://www.sba.gov/content/summary-size-standards-industry>.

## **VII. Communications by Outside Parties to the Commissioners or Their Advisors**

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record.

### **List of Subjects in 16 CFR Part 429**

Sales Made at Homes or at Certain Other Locations; Trade practices.

For the reasons stated in the preamble, the Federal Trade Commission proposes to amend part 429 of title 16, Code of Federal Regulations, as follows:

1. The authority citation for 16 CFR parts 429 is revised to read as follows:

AUTHORITY: 15 U.S.C. 41 et seq.

2. Amend § 429.0, by revising the introductory text of paragraph (a) to read as follows:

#### **§ 429.0 Definitions**

\* \* \* \* \*

(a) *Door-to-Door Sale* — A sale, lease, or rental of consumer goods or services with a purchase price of \$130 or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller (e.g., sales at the buyer's residence or at facilities rented on a temporary

basis, such as hotel or motel rooms, convention centers, fairgrounds and  
restaurants, or sales at the buyer's workplace or in dormitory lounges). The term  
*door-to-door sale* does not include a transaction:

\* \* \* \* \*

By direction of the Commission.

Donald S. Clark  
Secretary.

[FR Doc. 2012-31558 Filed 01/16/2013 at 8:45 am;

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